IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 123 of 2004
to
FIRST APPEAL NOS.137 OF 2004

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD.VANKAR LAVJIBHAIKALABHAI

Versus

SPL.LAQ OFFICER

Appearance:
MS ZA BHATT for MR AJ PATEL for APPELLANTS
MR AD OZA, GP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. These are appeals under section 54 of the Land Acquisition Act read with section 96,CPC at the instance of the original claimants claiming enhanced

compensation.

2. The lands in question were acquired by the State Government for the purpose of Narmada Nigam for power station. Notification under section 4(1) of the Land Acquisition Act, 1894 (the Act for short) was published on 13th August 1993 and notification under section 6 was published on 24th February 1994. After due inquiry the Special Land Acquisition Officer declared the award under section 11 of the said Act whereby he has awarded Rs.3.60ps per square metre. The claimants accepted the said award under protest and objection. Not satisfied with the award of the Special Land Acquisition Officer, the appellants approached the Reference Court by filing Land Acquisition References No.1358 to 1361 of 1997 and 706 to 717 of 1997.

3. The Reference Court has considered the evidence of witness Kantibhai Ambalal Patel, one of the claimants in LAR No.713/97, who has produced the revenue extract of 7/12 form at Exh.11 and also the previous judgement in respect of the land situated in the same village at Exh.12. The respondents have examined one Harshadkumar Mansukhlal Vora at Exh.16 and Kantilal Mohanlal Patel at Exh.20 and the parties have filed closing pursis at Exh.17 and 21. The Reference Court, after considering the oral as well as the documentary evidence on record, has awarded amount of Rs.23/- over and above the amount of Rs.3.60 granted by the Land Acquisition Officer. The present appeals are filed against the award passed in LAR Nos.1358 to 1361 of 1997 and 706 to 711 and 713 to 717 of 1997.

4. Heard the learned counsel for the respective parties. Learned counsel for the appellants submitted that a Division Bench of this Court, by judgement and order dated 12th March 2001, passed in First Appeal Nos.104/2001 to 160/2001, has awarded Rs.26.60ps per square metre for the lands situated in the same village acquired for the very same purpose. He submitted that in the aforesaid case the notification under section 4 was published on 22nd April 1991, whereas in the present case the notification under section 4 was published on 13th August 1993 i.e. after two years and five months. Therefore, in view of the decision of the Supreme Court, the claimants are entitled to 10% rise every year. He further submitted that even if 20% rise is given, the claimants are entitled for Rs.31.90ps, whereas in the present case they have claimed only additional sum of Rs.4 per sq. mtre.

5. The second contention raised by the learned counsel for the appellant is that in clause 6 of the award, the Reference Court has not awarded interest on the amount which was awarded under sections 23(2) and 23(1-A) of the Act. Learned counsel submitted that in view of the judgement of the Supreme Court in the case of N.I. Trust Vs. Vasant Rao, reported in 2003(1) GLH 140 (para 53), the claimants are entitled to get interest on the amount payable to them under subsection (1-A) of Section 23 of the Act.

6. In view of the judgement and order of this Court in First Appeal Nos.104/2001 to 160/2001, Mr. A.D. Oza, learned GP for the respondents, is not in a position to defend the case of the appellant for enhanced compensation as stated above, more particularly when the judgement of the Division Bench is accepted by the Government. He also could not dispute the fact that in view of the judgement of the Supreme Court the claimants are entitled for 10% rise for every year. Further, in view of the law laid down by the Supreme Court in the case of N.I. Trust (supra), Mr. Oza has fairly conceded that the claimants are entitled to interest on the amount awarded under section 23(1-A) & (2) of the said Act.

7. Therefore, considering the aforesaid judgements and the documentary evidence on record, it is clear that the claimants are entitled to get 10% rise for every year and they are also entitled to get interest on the amount awarded under section 23(1-A) & (2) of the said Act. By virtue of the award of the Tribunal the appellants have already been awarded a sum of Rs.26.60 per square metre. Therefore, looking to the facts and circumstances of the case, there is sufficient justification for granting additional sum of Rs.3.40 per square metre.

8. In the result, the appeals are partly allowed. It is held that the claimants are entitled to get further additional amount of Rs.3.40 per square metre (i.e. Rs.30 per square meter in all) for the acquired land, as also interest on the amount awarded under section 23(1-A) & (2) of the Act. The common judgement and award of the Reference Court is modified to the aforesaid extent. No order as to costs.

[KSHITIJ R. VYAS, J.] [K.S. JHAVERI, J.]

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